

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



07

File: LIN 06 018 54039 Office: NEBRASKA SERVICE CENTER Date: MAR 06 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to amend its petition and change the beneficiary's status from specialized knowledge worker (L-1B) to manager or executive (L-1A) and extend his period of stay as a nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L). The beneficiary first changed status to L-1 classification on November 2, 2000 (LIN 05 153 52884) as an intracompany transferee having specialized knowledge (L-1B). After subsequent extensions of stay, the beneficiary's current L-1 status as a specialized knowledge worker (L-1B) expired on November 2, 2005, exactly five years after the beneficiary first changed status to L-1B classification. The petitioner filed the instant petition seeking to amend the petition and extend the beneficiary's stay on October 24, 2005, or 9 days before the expiration of the petition. The petitioner identified the beneficiary's intended period of employment in the Form I-129 as November 3, 2005 until November 3, 2006. The director concluded that, because the petitioner did not file the petition at least six months prior to the expiration of the beneficiary's five-year stay as an L-1B nonimmigrant, the petitioner had not filed timely, and he therefore denied the petition to amend the petition and change the beneficiary's classification to L-1A status, and denied the application for an extension of stay, pursuant to 8 C.F.R. § 214.2(l)(15)(ii).

On appeal and in his response to the Request for Evidence, counsel asserts that the director must consider the petitioner's request to amend the beneficiary's L classification even if it was filed less than six months before the expiration of the beneficiary's L-1B status. The extension portion of the petition is a separate action, and the director is obligated to make a determination on an amendment request made pursuant to 8 C.F.R. § 214.2(l)(7)(i)(C) regardless of the beneficiary's entitlement to an extension of stay under 8 C.F.R. § 214.2(l)(15)(ii).

The regulation at 8 C.F.R. § 214.2(l)(15)(ii) states the following, in pertinent part:

The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by [Citizenship and Immigration Services] in an amended, new, or extended petition at the time that the change occurred.

The regulation at 8 C.F.R. § 214.2(l)(7)(i)(C) states:

The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e., from a

specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

Upon review, the AAO agrees with counsel that the petitioner's request to amend its petition to change the beneficiary's L-1 classification from L-1B to L-1A pursuant to 8 C.F.R. § 214.2(l)(7)(i)(C) is a separate and distinct action from a request for an extension of stay made pursuant to 8 C.F.R. § 214.2(l)(15)(ii). Therefore, even if a request for an extension of stay cannot be granted pursuant to 8 C.F.R. § 214.2(l)(15)(ii) because the petitioner failed to file the request to amend the petition at least six months prior to the expiration of the beneficiary's five-year period of stay as an L-1B nonimmigrant, the director is still obligated to consider the request to amend the petition to change the beneficiary's classification to L-1A status from L-1B as an independent matter. In this case, since the petitioner filed the request to amend the petition nine days before the expiration of the petition which it sought to amend, the director would normally have been obligated to address this amendment request even if the result would have been a change in classification from L-1B to L-1A for only nine days (October 24, 2005 until November 2, 2005). However, in this case, the denial of the amendment request was nevertheless proper for the reasons outlined below.

As indicated above, the petitioner indicates on page one of the Form I-129 that it is seeking to "amend" its petition to change the beneficiary's L-1 classification from specialized knowledge worker (L-1B) to managerial or executive employee (L-1A). However, the petitioner indicates on page three of the Form I-129 that the intended dates of employment of the beneficiary are November 3, 2005 until November 3, 2006. Therefore, because the petition which the petitioner asserts it is "amending" expires on November 2, 2005, the petitioner is not really seeking to "amend" this petition since the intended dates of the beneficiary's employment fall after the expiration of the petition. If the intended dates of employment described on page three had included any period of time during the validity of the petition which the petitioner was seeking to amend, then the director would have been obligated, as explained above, to render a decision on this amendment request despite any ineligibility for an extension of stay under 8 C.F.R. § 214.2(l)(15)(ii). However, as the dates of intended employment covered by the instant petition fall beyond the earlier petition's expiration date, there was no "amendment" for the director to consider, and the only issue before the director concerned a change in previously approved employment in the context of a request for an extension of stay.

With regard to this remaining issue, 8 C.F.R. § 214.2(l)(12)(i) states in pertinent part:

[A] new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15)(L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year.

As indicated above, the beneficiary would have spent the maximum permitted time period in the United States for an L-1B nonimmigrant by the start date requested in the Form I-129. Moreover, as the petitioner failed to establish that the beneficiary was eligible for either an additional period of stay pursuant to 8 C.F.R. § 214.2(l)(15)(ii) or a new seven year period of stay pursuant to 8 C.F.R. § 214.2(l)(12)(i), the director was correct in denying the amendment petition and change of status request.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.